

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

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| <b>In the Matter of:</b>                         | ) |                            |
|  | ) |                            |
| <b>Petition by the Colorado Public Utilities</b> | ) | <b>CC Docket No. 96-45</b> |
| <b>Commission, Pursuant to 47 C.F.R.</b>         | ) |                            |
| <b>Paragraph 54.207(c), for Commission</b>       | ) |                            |
| <b>Agreement in Redefining the Service</b>       | ) |                            |
| <b>Area Of Wiggins Telephone Association,</b>    | ) |                            |
| <b>A Rural Telephone Company</b>                 | ) |                            |

**Reply Comments Of:  
Fred Williamson and Associates, Inc. ("FW&A")  
On behalf of:**

**Chouteau Telephone Company, an Oklahoma ILEC  
H&B Telephone Communications, Inc., a Kansas ILEC  
Moundridge Telephone Company, Inc., a Kansas ILEC  
Pine Telephone Company, Inc., an Oklahoma ILEC  
Pioneer Telephone Association, Inc., a Kansas ILEC  
Totah Telephone Company, Inc., a Kansas and Oklahoma ILEC  
Twin Valley Telephone, Inc., a Kansas ILEC**

### **Summary of the COPUC Petition**

The Colorado Public Utilities Commission (COPUC) is requesting that the Federal Communications Commission (Commission) redefine the service area of Wiggins Telephone Association (WTA) to be consistent with WTA's approved method of zone disaggregation and targeting of its Federal Universal Service Support.<sup>1</sup> Specifically, the COPUC is requesting that the Commission redefine WTA's service area to be WTA's individual wire center areas. If approved by the Commission, this request by the COPUC would, based on the Petition Exhibit B, cause WTA to have five study areas, rather than one, consistent with the wire centers served by WTA. The COPUC's rationale for this request is:

1. Redefining WTA's service area to the wire center level is consistent with the recommendations of the CC Docket No. 96-45 Joint Board.<sup>2</sup> Consequently, the requirements of paragraph 54.207(c) of the Commissions rules and Section 214(e)(5) of the Act are satisfied.<sup>3</sup>
2. WTA current service area contains large, non-contiguous wire centers.<sup>4</sup>

The COPUC asserts that:

- The broader the service area, the more daunting the task faced by a competitor to serve the entire service area.<sup>5</sup>
- Requiring potential new entrants to serve these large geographic areas will be excessively burdensome.<sup>6</sup>

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<sup>1</sup> COPUC Petition, page 3.

<sup>2</sup> Id., page 10.

<sup>3</sup> Id., page 15.

<sup>4</sup> Id., page 1.

<sup>5</sup> Id., pages 6 and 7.

<sup>6</sup> Id., pages 1 and 2.

- A requirement to serve a large, non-contiguous geographic area is a barrier to entry.

3. The COPUC asserts that Commission approval of its request will promote competition in WTA's service area.

The Commission must dismiss the COPUC petition because each of the COPUC's rationales, upon which its Petition is based, is flawed, incorrect and in direct contravention of the requirements of the Act.

### **Requirements of the Act**

Section 214(e)(5) of the Act states that:

In the case of an area served by a rural telephone company, "service area" means the company's "study area" unless and until the Commission and the States, after taking into account recommendations of a Federal-State Joint Board instituted under section 410(c), establish a different definition of service area for such company.

This requirement is crystal clear and has not been satisfied by the COPUC Petition. The Federal-State Joint Board must recommend that the study area of the rural telephone company be revised before the Commission can adopt a revision of the study area for the rural Company. A single State Commission such as the COPUC and the Commission cannot, without the specific recommendation of the Joint Board with regard to the telephony company in question, act unilaterally to redefine the study area of a rural telephone company as the COPUC requests. The Act requires that the Joint Board must recommend such a redefinition before the Commission may act to redefine the rural telephone company's study area.

**The COPUC Petition Does Not Comply With the Requirements of the Act or the  
Commission's Rules**

At odds with the assertions of the COPUC, the Joint Board had not made a recommendation, either for WTA or for any other rural telephone company to redefine their study or service area.

The COPUC claims that its proposed redefinition of WTA's service area is "...consistent with the Joint Board's recommendation."<sup>7</sup> In support of this flawed notion, the COPUC asserts that:

- "The Joint Board originally recommended that rural service areas remain the study areas of those companies, but *implied* that its recommendation might change as circumstances change."<sup>8</sup>
- "As reflected in the Commission's Fourteenth Report and Order, paras. 136-164, the Joint Board...has issued more recent recommendations *on redefining rural service areas*."<sup>9</sup>

In fact, and at odds with the COPUC's claims, the Joint Board has not changed its original recommendation adopting the current or existing service or study areas of rural telephone companies. The Joint Board recommendations reflected in the Commission's Fourteenth Report and Order had nothing to do with redefining the study areas of rural telephone companies per Section 214(e)(5) of the Act. Instead, these recommendations simply allowed rural telephone companies to disaggregate their universal service support below the study area level to support zones. The zone support disaggregation that was

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<sup>7</sup> Id., page 10.

<sup>8</sup> Id., bolding and italics added for emphasis.

<sup>9</sup> Id., page 11, bolding and italics added for emphasis.

allowed by the Joint Board did not explicitly or through implication revise the study area of ILECs such as WTA or any rural incumbent local exchange carrier (ILEC).

**The COPUC's Interpretation that the Support Disaggregation Order Redefined a Rural ILEC's Study Area is Not Only At Odds With the Requirements of the Act, but it is Flawed and Impractical**

Zone support disaggregation could be by exchange or by wire center as required by the COPUC. However, it could also result in an urban versus rural zone split of all of the exchanges and wire centers in a study area or a zone disaggregation of wire centers into the base rate area and outside the base rate area. An ILEC could also have disaggregated its wire center support zones into urban, rural and major business or office park. In fact, many zone disaggregation options are possible. To assume, as the COPUC has done, that the Joint Board recommendation allowing zone support disaggregation implies that the Joint Board was also requiring or recommending that the zone disaggregation areas are an ILEC's new service areas is wrong and impractical, considering all of the possible methods of disaggregation.

The zone support disaggregation adopted by the COPUC does not, as the COPUC alleges,<sup>10</sup> address the cream skimming, equal competitive footing and administrative concerns expressed by the Joint Board in its November 8, 1996 Recommendation that preserved the existing ILEC study areas.<sup>11</sup>

A.) Cream Skimming – The Joint Board recommended requiring that competitors serve the entire existing rural ILEC study area for the following reason - “[P]otential ‘cream

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<sup>10</sup> Id., page 11.

skimming' is minimized because competitors, as a condition of eligibility, must provide services throughout the rural telephone company's study area. Competitors would thus not be eligible for universal service support if they sought to serve only the lowest cost portions of a rural telephone company's study area."<sup>12</sup> Cream skimming is still a valid concern, even with zone support disaggregation. Because rural ILECs do not keep the majority of their costs by wire center (outside plant, commercial administrative, customer, etc.), but instead record these costs at the study area level, assignment of costs to wire centers is at best an imprecise allocation process. Consequently, to assume that a wire center support zone disaggregation will "...resolve concerns about cream skimming..."<sup>13</sup> as the COPUC has done, is a faulty assertion. It is quite likely that because of assumptions made to allocate costs to wire center support zones, some level of support is misplaced between wire center zones and thus cream skimming will still occur. Further, disaggregation of costs to the wire center zones may alleviate some potential for cream skimming between wire center zones, but the predominate cream skimming concern is between urban and rural zones within a wire center. The COPUC rule requiring disaggregation to the wire center level does nothing to resolve this concern. Consequently, the Joint Board recommendation to require that a competitor serve the entire existing study area as a condition of eligibility for receiving universal service support is not only required by the Act, but is still necessary to deal with cream skimming issues.

B.) Different Competitive Footing – The Joint Board recommended requiring that competitors serve the entire existing rural ILEC study area because rural ILECs serve the

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<sup>11</sup> Joint Board Recommendation in CC Docket No. 96-45, paragraphs 172 to 174.

<sup>12</sup> Id., paragraph 172.

entire area, and thus in the Act, rural ILECs are treated differently than non-rural ILECs.<sup>14</sup> This recommendation, which is unchanged by the Joint Board, reflects the Act's recognition that rural ILECs serve as the carrier of last resort in thin (low density), high cost rural markets. There must be a compelling public interest reason to facilitate or promote competitive eligible telecommunications carrier (ETC) entry into these markets because of the risk of significant harm to the rural ILEC serving the market and rural consumers. Consequently, to minimize this risk, the Joint Board recommended requiring that competitive carriers seeking ETC status serve the entire (not support zone disaggregated) rural ILEC study area. The competitor is thus placed on a service area competitive footing equivalent to the rural ILEC that must serve the entire study area, as the carrier of last resort (COLR).

C.) Administrative Difficulties - The Joint Board recommended requiring that competitors serve the entire existing rural ILEC study area because rural ILECs utilize embedded costs to determine support levels. Because rural ILECs determine costs at the study area level, the Joint Board concluded that determining such costs at a disaggregated level would be administratively difficult and place a significant burden on rural ILECs.<sup>15</sup> This circumstance has not changed and the Joint Board has recommended no change. As the COPUC notes, rural ILECs may be able to allocate (imprecisely) their study area costs to a wire center level. However, this one time zone support and imprecise allocation does not eliminate the burden that rural ILECs will face in order to keep its costing records at the revised and disaggregated level, as would be necessary if its study area was

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<sup>13</sup> COPUC Petition, page 12.

<sup>14</sup> Joint Board Recommendation in CC Docket No. 96-45, paragraph 173.

<sup>15</sup> Id., paragraph 174.

redefined into separate disaggregated study areas. Rural ILEC study areas are the basis for cost accounting (FCC Part 32) as well as jurisdictional (FCC Part 36) and access (FCC Part 69) cost allocations. Redefining a rural ILEC's study area into multiple disaggregated study areas would mean that a rural ILEC would be required to perform Part 32, Part 36 and Part 69 at the revised study area levels. Not only would this be an overwhelming burden, but it would also result in revised federal and state universal service support levels (calculated at the revised study area level) and possibly revised access and local rate levels.

The COPUC's over simplistic and incorrect notion that its proposal will satisfy the Joint Board's reasons for not requiring the disaggregation of rural ILEC study areas into multiple new study areas is wrong. Further, the Joint Board has made no recommendation for such a disaggregation for WTA or for any other rural ILEC.

**The COPUC Petition is Pro-Competitor, Not Pro-Competition and Will, if  
Approved by the Commission Harm the Provision of Universal Service in Rural  
Areas**

The COPUC claims that, because of WTA's large and non-contiguous wire centers, competitors will:

- Have difficulty serving all of WTA's current study area and to enter all of the study area at once.<sup>16</sup>
- Preclude potential competitors from seeking ETC designation even for wire centers where these competitors can provide service.<sup>17</sup>



- Create a barrier to entry because potential competitors will not receive universal service support while WTA will.<sup>18</sup>

None of these COPUC claims and assertions are correct. WTA must, as required of any rural ILEC, provide facilities to all of the customers in its current study area as part of its COLR obligation and in order to receive universal service support. The rural ILEC no doubt finds it difficult to serve non-contiguous, large and high cost geographic areas. The Joint Board recognized the necessity, as required by the Act, to insure that such ETC designation is in the public interest and that potential competitors seeking ETC status were not given a competitive advantage but were placed on a study area equivalent competitive footing with rural ILECs. This means that, as required by the Act in Section 214(e)(5), competitors seeking ETC status in a rural ILEC's study area must, as does the rural ILEC, serve the entire study area, even if it is large and has wire centers that are non-contiguous. This insures that competitors and the rural ILEC are on an equivalent competitive footing. The Acts requirements, which were designed to insure that all of the customers in a study area served by a rural LEC, continue to be provided with universal services (quality services at just, reasonable and affordable rates) cannot be ignored to serve or promote the interests of a competitor that for its own reasons chooses to serve only part of a rural ILEC's study area and thus, cannot meet the requirements of the Act to become an ETC in the rural ILEC's area. Allowing a competitor to serve only a part of a rural ILEC's service area is not only at odds with the plain language of the Act and Joint Board recommendations, but is not in the public interest. As discussed previously, even if the rural ILEC has disaggregated its support, cream skimming will still occur, the

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<sup>16</sup> COPUC Petition, pages 13 and 14.

<sup>17</sup> Id., page 14.

ILEC will incur significant initial and ongoing administrative costs and the ILEC and competitor will not be on an equivalent competitive footing. The likely result is that as support and other revenues are lost in the selective service area chosen by the competitor, the rural ILEC will be deterred from providing the advanced services called for in Section 254 of the Act and may be forced to raise rates to unaffordable levels, at odds with the requirements of the Act. Even if what the COPUC is proposing were not at odds with Section 214(e)(5) of the Act (and it is), the proposal would not be in the public interest. New competitive entrants seeking ETC status in rural ILEC study areas should not be allowed to simply ignore the Law and seek ETC status only in the areas in which they find it convenient to provide service. If they seek support, they must, in the public interest and in conformance with the Law and the Joint Board's recommendations, provide service, even where it is inconvenient, as have the rural ILECs, through the entire rural ILEC's current study area.

**The COPUC's New Rule Is Irrelevant to the Determination of the Area that Must  
be Served by a Competitor if it Seeks ETC Status in a Rural ILEC's Study Area**

On page 8 of its Petition, the COPUC discusses a new Rule 11 that it enacted that requires that a rural ILEC's universal service disaggregation zones become its new study areas. This rule does not trump the requirements of the Federal Act. It has no meaning or enforceability when it is at odds with the Federal Act's requirement that a competitor seeking ETC status in a rural ILEC service area must serve the entire original study area (not the disaggregated areas created by Rule 11), unless and until the Joint Board

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<sup>18</sup> Id.

recommends otherwise. To date, the Joint Board has made no such recommendation for WTA or for any other rural ILEC.

### **Conclusion**

FW&A on behalf of the ILECs it represents concurs with the National Telecommunications Association (NTCA) comments filed on June 27, 2003, opposing the COPUC Petition and urges the Commission, for the reasons listed herein, to deny the COPUC Petition.

Respectfully submitted on behalf of the ILECs by,

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